198526

SHUMAKER, LOOP & KENDRICK, LLP

NORTH COURTHOUSE SQUARE
1000 JACKSON
TOLEDO, OHIO 43624-1573
TELEPHONE (419) 241-9000
FAX (419) 241-6894

MICHAEL M. BRILEY
(419) 321-1325
mbriley@slk-law.com

OTHER OFFICE LOCATIONS:
CHARLOTTE
COLUMBUS
TAMPA

RECEIVED MAY 10 2000 MAIL MANAGEMENT STB

May 9, 2000

Via Federal Express

ENTERED
Office of the Secretary
MAY 15 2000
Part of
Public Record

Office of the Secretary
Case Control Unit
ATTN: STB Ex Parte No. 582 (Sub-No.1)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 582 (Sub No. 1) -
Major Rail Consolidation Procedures
Our File No. 20243

Gentlemen:

Please find enclosed an original and 25 copies of the Comments Of The Glass Producers Transportation Council in reference to the above matter.

Very truly yours,

Michael M. Briley

MMB:jas
Enclosures

cc: All Counsel of Record
All GPTC Members

198526

ENTERED
Office of the Secretary

MAY 15 2000

Part of
Public Record

RECEIVED
MAY 10 2000
MAIL
MANAGEMENT
STB

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 582 (Sub-No. 1) – MAJOR RAIL CONSOLIDATION PROCEDURES	**)))**	**COMMENTS OF THE GLASS PRODUCERS TRANSPORTATION COUNCIL**

Now comes the GLASS PRODUCERS TRANSPORTATION COUNCIL ("GPTC") and respectfully submits its comments to the Surface Transportation Board, pursuant to the Board's Order of March 31, 2000 as follows:

GPTC is a major transportation trade association comprised of the majority of domestic glass producers (containers, tableware, float glass, television tubes, biomedical glass, etc.) and major suppliers of raw materials to the glass producing industry in the United States. A copy of the membership list of GPTC is attached hereto as Appendix A and made a part hereof. The glass industry and its materials suppliers represent a major national industry and an important part of the gross national product of the United States. It is estimated that in the year 1999 alone, the members of GPTC expended approximately $1.1 billion for transportation services, of which approximately $521 million was expended exclusively for rail transportation services. The major (by volume and cost) raw materials used to manufacture glass (i.e., soda ash, sand and limestone) move predominantly by rail due to their substantial weight, density, volume and distance of transport. As a consequence of this, the American glass industry has a serious interest in the future of the American railroad system and its viability as the most significant transportation source to the industry.

Over the last decade, GPTC and its members have become deeply concerned about the rapidly increasing concentration among Class I railroads in the United States. Not only has this concentration reduced and limited access (and thereby eroded competition) but, moreover, the recent experience of our industry with the Union Pacific/Southern Pacific/Burlington/Santa Fe merger as well as the split-up of Conrail has been one of disastrous service failures. GPTC and its members have complained to the Board on several separate occasions about severe deterioration of service following these major consolidations, which service failures occurred notwithstanding the repeated promises of the carriers involved that there would be no significant impact upon service. During certain points in time, which have been previously documented to the Board, certain members of GPTC have been adversely impacted to the point where plants have been closed, supplies have been disrupted, and millions of dollars in sales have been lost to foreign competitors and domestic competitors of alternative products. We are deeply concerned that the motivation of the carriers is not, as stated, an increase in efficiency, but rather an elimination of what little remaining competition exists in the rail industry.

In its March 31, 2000 Order, the Board identified a number of areas of concern upon which it wished to solicit comments. GPTC realizes from its review of the service list that there will be a large number of companies and organizations commenting on these matters. Rather than burden the Board with repetitive positions regarding all of these issues, GPTC would like to selectively focus its comments upon a few of the issues which it feels are particularly important to our industry.

1. Safeguarding Rail Service. The serious and protracted service disruptions that our industry has faced following each of the recent Class I railroad mergers have harmed the members of GPTC enormously. While we do not seriously dispute the bona fides of the railroads with respect to their pre-merger aspirations regarding service, it is true beyond any preadventure of doubt that these consolidating carriers grossly underestimated the logistical difficulties to be encountered by consolidating large carriers. While our membership may even be willing to understand some of the planning failure of the railroads, we cannot understand or accept in any

fashion the refusal of the railroads to fully or even adequately remediate the disastrous results of this negligence. While there were admittedly some financial adjustments made as a result of these failures, many of our members have reported a refusal on the part of the carriers to monetarily adjust for the extraordinary damage caused by their poor planning, lack of proper foresight and negligence. While it is indeed important that the Board adopt regulations in the future that safeguard American industry against such harm caused by future rail mergers, we also believe that responsibility without accountability is an empty effort. Accordingly, we request that the Board adopt specific and mandatory monetary penalties that are applicable to service failures resulting from consolidations. This accountability should be benchmarked against pre-merger service levels. If the railroads wish to derive the reduced competition benefits from mergers, their customers should not also have to suffer the economic consequences of poor planning. While it is certainly historically true that certain service failures occur within the rail industry due to weather conditions, temporary car shortages, accidents and the like, even the carriers themselves have admitted that the disastrous service failures flowing from the last two major mergers have been the direct result of their own improper planning. While it is important for the STB to adopt procedures that will require consolidating railroads in the future to better plan against such failures, it is critical that the carriers be held economically responsible should they not properly protect service in this process. It is important for the Board to understand that while a carrier can survive major disruptions of service (as many of its customers have no alternative service options), the American glass industry is under severe competitive attack from foreign vendors who obtain their raw materials from carriers other than the American railroad system. History has shown, that more often than not business lost to foreign competition cannot easily be regained once rail service is restored. At least if American industry were guaranteed an economic remediation for its losses suffered as a result of poor carrier planning, American industry would then be on a more "equal playing field" with its foreign competition. Moreover, of course, we believe that mandatory remediation would assist enormously in much better pre-merger planning for obvious reasons.

2. Promoting and Enhancing Rail Competition. Without doubt it is time that the Board adopt the policy of emphasizing and enhancing both intermodal and intramodal competition rather than simply trying to "preserve competition". It is the testimony and experience of the GPTC members that notwithstanding the promises of the consolidating carriers to the contrary, the large mergers which have occurred have not only failed to improve intramodal competition but have in fact caused it to further deteriorate. We believe this to be due primarily to the inability of the carriers to work together on even mandated access issues in a meaningful and practically available manner. We urge the Board therefore in considering future rail mergers to require merger applicants to maintain open gateways for all routings, to provide switching, at an agreed-upon fee, to all exclusively serve shippers located within or adjacent to terminal areas, to require merger applicants to offer upon request contracts for the competitive portion of joint line routes when the joint line partner has a bottleneck segment, to require merger applicants to provide new thru routes at reasonable interchange points, and to review and revise the "one lump" theory.

3. Merger Related Public Interest Benefits. We encourage the Board to be much more skeptical of carrier estimates regarding efficiencies and other public interest benefits achievable through proposed mergers. We do not believe that either efficiencies or other public benefits have resulted from the past mergers, notwithstanding the promises of the carriers, and we respectfully request that the Board adopt specific rules to insure that these matters occur. Again, there needs to be an accountability factor if the carriers fail to produce promised efficiencies and public benefits from these transactions. Carriers should also be required to prove, as occurs in merger analysis with the

federal antitrust agencies, that less competitively restrictive alternatives to merger that would achieve the same efficiencies and benefits are not available except by merger. GPTC agrees with the present general merger policy expressed by the Antitrust Division of the United States Department of Justice that "efficiency" should not be considered in major horizontal mergers where the result of the merger would be a high concentration of product service within the relevant geographic market. This is so because, obviously, notwithstanding the achievement of potential efficiency, if two merging firms become dominant within a market it is partially unlikely that the economies created by the achievement of efficiency will be passed on to the consumer on a long term basis. Moreover, this is the actual experience in the rail industry as rates have actually gone up since recent mergers. Accordingly, it is the position of GPTC that the Board should not even consider efficiency in rail merger analysis. If however it is the decision of the Board to do so, we respectfully urge the Board to monitor claimed efficiencies on a post-merger basis, to adopt regulations that require those cost savings produced by efficiencies to be passed on to rail customers, and, once again, to provide accountability to the carriers in the event that promised efficiencies and benefits are not achieved.

Respectfully submitted,

GLASS PRODUCERS
TRANSPORTATION COUNCIL

By: Donald R. Krause
Donald R. Krause
President

CERTIFICATE OF SERVICE

Pursuant to the Board's Order of April 28, 2000, a copy of the foregoing has been served by United States mail, postage pre-paid, to all parties of record this 8th day of May, 2000.

Michael M. Briley
Attorney for the
Glass Producers Transportation Council

APPENDIX A

GLASS PRODUCERS TRANSPORTATION COUNCIL MEMBERS

AFG Industries, Inc.
1400 Lincoln Avenue
P.O. Box 929
Kingsport, TN 37662

Alex Trading, Inc.
77 St. Anne's Place
Pawleys Island, SC 29585

Anchor Glass Container
4343 Anchor Plaza Parkway
Tampa, Florida 33634

Ball-Foster Glass Container Co.
1509 South Macedonia Ave.
Muncie, Indiana 47302-3664

The Calumite Company
P.O. Box 810006
Boca Raton, Florida 33481

Cardinal FG Portage
1650 Mohr Road
Portage, Wisconsin 53901

Cardinal FG
2200 Parkway Dr.
Menominee, Wisconsin 54751

FMC Corporation
1735 Market Street
Philadelphia, PA 19103

Franklin Industrial Minerals
612 Tenth Ave., North
Nashville, TN 37203

General Chemical Industrial Products
90 East Halsey Road
Parsippany, NJ 07054

Giles Chemical Industries
P.O. Box 370
Waynesville, NC 28786

Global Stone Chemstone Corp.
1696 Oranda Road
P.O. Box 71
Strasburg, Virginia 22657

Guardian Industries Corp.
2300 Harmon Road
Auburn Hills, Michigan 48326-1714

IMC Chemical Co.
8300 College Boulevard
Overland Park, Kansas 66210

Libbey-Owens-Ford Co.
811 Madison Avenue
P.O. Box 799
Toledo, Ohio 43695-0799

Libbey, Inc.
P.O. Box 919
940 Ash Street
Toledo, Ohio 43697

Libbey-Owens-Ford Co. (Pilkington)
811 Madison Ave.
P.O. Box 799
Toledo, Ohio 43697-0799

Mississippi Lime Company
7 Alby Street
P.O. Box 2247
Alton, IL 62002-2247

OCI Chemical Corp.
Two Corporate Drive
P.O. Box 902
Shelton, Connecticut 06484

Oglebay Norton
975 Linden Avenue
P.O. Box 1000
Zanesville, Ohio 43702-1000

Owens-Brockway Glass Container, Inc.
One Seagate
26th Floor
Toledo, Ohio 43666

Solvay Minerals
P.O. Box 27328
Houston, TX 77227-7328

Strategic Materials, Inc.
2451 Cumberland Pkwy
Suite 3463
Atlanta, Georgia 30339

Techneglas, Inc.
727 E. Jenkins Ave.
Columbus, Ohio 43207

Techneglas, Inc.
Old Boston Road
Pittston, PA 18640

Thomson Consumer Electronics
24200 U.S. Route 23, South
Circleville, Ohio 43113

Unimin Corporation
258 Elm St.
New Canaan, CT 06840

Unimin Canada, Ltd.
10 Four Seasons Place
Suite 600
Toronto, Ontario M9B-6H7

U.S. Silica Company
P. O. Box 187
Berkeley Springs, WV 25411

Wedron Silica Company
P. O. Box 119
Wedron, Illinois 60557

Zemex Industrial Minerals
1040 Crown Pointe Parkway
Suite 270
Atlanta, Georgia 30338